

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

WANI J. KOSE,

Plaintiff,

v.

H. SIEZ, et al.,

Defendants.

Case No.: 1:23-cv-00557-KES-CDB

**ORDER REGARDING PLAINTIFF'S  
NOTICE OF VOLUNTARY DISMISSAL  
AND THE STIPULATION TO  
VOLUNTARY DISMISSAL**

(Docs. 45 & 46)

Plaintiff Wani J. Kose is appearing pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. section 1983. This action proceeds on Plaintiff's Eighth Amendment failure to protect claim against Defendant Saiz and his Eighth Amendment deliberate indifference to serious medical needs claims against Defendants Negre and Walker.

**I. BACKGROUND**

On April 29, 2025, the Court issued its Second Scheduling Order in this action. (Doc. 44.) A pretrial conference was set for November 10, 2025, at 3:30 p.m., and jury trial was scheduled for January 21, 2026, at 8:30 a.m., before assigned District Judge Kirk E. Sherriff. (*Id.*)

On July 25, 2025, defense counsel Patricia M. Kealy filed a document titled "Plaintiff's Notice of Voluntary Dismissal with Prejudice of Defendants Negre and Walker." (Doc. 45.)

On July 28, 2025, Defendant Saiz filed a Stipulation for Voluntary Dismissal with Prejudice. (Doc. 46.)

## II. DISCUSSION

Plaintiff's notice filed July 25, 2025, purports to "voluntarily dismiss[] Defendants A. Negre and M. Walker from this action with prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i)." (Doc. 45.) It is signed by Plaintiff Wani J. Kose and dated July 17, 2025. (*Id.*)

Rule 41(a)(1)(A)(i) of the Federal Rules of Civil Procedure provides a plaintiff may file "a notice of dismissal *before* the opposing party serves either an answer or a motion for summary judgment." Fed. R. Civ. P. 41(a)(1)(A)(i), italics added. In the July 25 filing, Plaintiff seek to dismiss Defendants Negre and Walker from this action with prejudice. (Doc. 45.) However, Defendants Saiz, Negre, and Walker filed an answer to Plaintiff's operative complaint on November 7, 2023. (*See* Doc. 18.) Consequently, Plaintiff cannot unilaterally dismiss Negre and Walker from this action under Rule 41(a)(1)(A)(i). However, the parties may jointly stipulate to dismissal of Negre and Walker pursuant to Rule 41(a)(1)(A)(ii).<sup>1</sup>

The Court next considers the stipulation filed July 28, 2025. (Doc. 46.) That document indicates Plaintiff and Defendant H. Saiz stipulate to dismissal of the action with prejudice pursuant to Rule 41(a)(1)(A)(ii), with each party to bear its own litigation costs and attorney's fees. (*Id.*)

Given the above, the Court will take no action on the filings of July 25, 2025, and July 28, 2025, to the allow the parties to file a single stipulation to voluntary dismissal of this action against Defendants.

## III. CONCLUSION AND ORDER

Accordingly, the Court **HEREBY ORDERS** as follows:

1. The filings of July 25, 2025 (Doc. 45) and July 28, 2025 (Doc. 46) are held in abeyance;
2. The parties — Plaintiff Wani J. Kose and Defendants A. Negre, H. Saiz, and M. Walker — are **DIRECTED** to file a single stipulation to voluntarily dismissal **no later than September 2, 2025**; and

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<sup>1</sup> Were Negre and Walker to decline to stipulate to dismissal, the Court may dismiss this action upon Plaintiff's request "on terms that the court considers proper." Fed. R. Civ. P. 41(a)(2).

1 3. If the parties cannot file a single stipulation to voluntary dismissal of this action by  
2 September 2, 2025, defense counsel **SHALL** file a status report by that same date.  
3 Any status report must address the parties' efforts to submit a single stipulation to  
4 voluntary dismissal, with prejudice, pursuant to Rule 41(a)(1)(A)(ii), why such a  
5 stipulation could not be submitted as ordered and provide a date upon which the  
6 parties expect to file said stipulation.

7 IT IS SO ORDERED.

8 Dated: **July 31, 2025**

  
UNITED STATES MAGISTRATE JUDGE